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6 JOHN F. VERNACCHIO,  
7 Plaintiff,  
8 v.  
9 RON DAVIS, et al.,  
10 Defendants.

Case No. 19-cv-07171-SI

**ORDER DENYING REQUEST FOR  
COUNSEL**

Re: Dkt. No. 28

11 Plaintiff requests that counsel be appointed to represent him in this action. A district court  
12 has the discretion under 28 U.S.C. §1915(e)(1) to designate counsel to represent an indigent civil  
13 litigant in exceptional circumstances. *See Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.  
14 1986). This requires an evaluation of both the likelihood of success on the merits and the ability of  
15 the plaintiff to articulate his claims *pro se* in light of the complexity of the legal issues involved.  
16 *See id.* Neither of these factors is dispositive and both must be viewed together before deciding on  
17 a request for counsel under § 1915(e)(1). Here, exceptional circumstances requiring the appointment  
18 of counsel are not evident. Plaintiff stated cognizable claims regarding his discharge from a prison  
19 job, but the court cannot at this time determine the likelihood of success on the merits because  
20 defendants have not yet made their position known. Plaintiff adequately articulated his claims *pro  
se* and the claims are not particularly complex. Since filing this action, plaintiff has been released  
21 from prison; in the free world, he has better access to resources to learn more about prosecuting his  
22 claims and to prepare for defendants' motion for summary judgment expected to be filed in January  
23 2021. For these reasons, the request for appointment of counsel is DENIED. Docket No. 28.

25 **IT IS SO ORDERED.**

26 Dated: December 4, 2020

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SUSAN ILLSTON  
United States District Judge